Gugins v. *Van Gorder*, 10 Mich. 523; *Parker* v. *Kane*, 4 Wis. 1, 12; *Farrar* v. *Farrar*, 4 N. H. 191, 195. See 18 HARV. L. REV. 105, 110. Other jurisdictions protect the purchaser by enjoining the grantee from setting up his legal title. *Russell* v. *Meyer*, 7 N. D. 335, 75 N. W. 262; *Reavis* v. *Reavis*, 50 Ala. 60. And wherever the transaction between the grantee and his vendee is itself in writing, or is taken out of the statute of frauds by part performance, as in the principal case, the vendee's equity for specific performance independently secures him against the grantee's assertion of his legal title. *Whisenant* v. *Gordon*, 101 Ala. 256, 13 So. 914.

EMINENT DOMAIN — WHEN IS PROPERTY TAKEN — LOSS CAUSED BY FEDERAL SHIFTING OF HARBOR LINES. — Pursuant to the authority given him by Congress to fix harbor lines in waters navigable for interstate purposes beyond which riparian owners should not build, the Secretary of War fixed a line in the Elizabeth River which took in the plaintiff's wharf. The plaintiff showed that his wharf had been erected in conformity with state regulation, and also did not transgress an earlier federal line established after his wharf was built, and asked that an injunction issue to prevent its destruction without compensation. *Held*, that the relief will be denied. *Greenleaf Johnson Lumber Co.* v. *Garrison*, 237 U. S. 251.

For a discussion of the principles involved, see NOTES, p. 806.

EVIDENCE — DECLARATIONS CONCERNING INTENTION, FEELINGS, OR BODILY CONDITION — EXPRESSIONS OF PRESENT PAIN MADE TO A PHYSICIAN AT AN EXAMINATION TO QUALIFY HIM AS A WITNESS. — The defendant's physician examined the plaintiff's injured ankle, not for the purpose of giving medical treatment, but to qualify as a witness at the trial then pending. He was permitted to testify that, upon pressure on the injured part, the plaintiff flinched. The defendant objected that such flinching was a mere declaration of the plaintiff made to a physician for the sole purpose of enabling him to testify. *Held*, that the testimony is inadmissible. *Norris* v. *Detroit United Ry.*, 151 N. W. 747 (Mich.).

Expressions of present pain, if involuntary, are admissible, without reference to the hearsay rule. When voluntary, like other attempts to convey thought, they possess a hearsay character, but are nevertheless generally admitted under an exception to the hearsay rule. See 3 WIGMORE, EVIDENCE, § 1718. Though a few jurisdictions confine the exception to declarations made to a physician, they are generally held admissible no matter to whom made. *Indiana Ry. Co.* v. *Maurer*, 160 Ind. 25, 66 N. E. 156; *Baltimore & Ohio R. Co.* v. *Rambo*, 8 C. C. A. 6, 59 Fed. 75. *Contra*, *Reed* v. *New York Central R. Co.*, 45 N. Y. 574; *Lake St. El. R. Co.* v. *Shaw*, 203 Ill. 39, 67 N. E. 374. And the mere fact that litigation has begun is not a sufficient bar. *Matteson* v. *New York Central R. Co.*, 35 N. Y. 487. *Cf. Mott* v. *Detroit, etc. Ry. Co.*, 120 Mich. 127, 79 N. W. 3. However, in many jurisdictions a strict limitation is placed upon the exception where, as in the principal case, the declaration was made to a physician to enable him to testify in an action for the injury. *Grand Rapids & Indiana R. Co.* v. *Huntley*, 38 Mich. 537; *Darrigan* v. *New York & New England R. Co.*, 52 Conn. 285. *Contra*, *Quaife* v. *Chicago, etc. Ry. Co.*, 48 Wis. 513, 4 N. W. 658; *Kent* v. *Lincoln*, 32 Vt. 591. A few jurisdictions confine this restriction to cases where the plaintiff himself calls the physician for the sole purpose of securing his testimony. *Abbot* v. *Heath*, 84 Wis. 314, 54 N. W. 574. But such a distinction is unwarranted, for the danger of fraud and pretence on the plaintiff's part when he has the litigation so closely in mind, is present no matter who called the physician. However, rather than fix for all cases any binding limitation of this sort, it would seem better to let the judge in his discretion determine whether the chance for imposition and

fraud renders the testimony too dangerous to leave to the jury. In any event, the jury, of course, may gauge the weight of the evidence according to the circumstances under which the declarations were made. See *Matteson* v. *New York Central R. Co.*, *supra*, p. 491; *Kent* v. *Lincoln*, *supra*, p. 598.

EVIDENCE — HEARSAY: IN GENERAL — USE OF ACCOUNT-BOOKS TO PROVE NON-DELIVERY OF GOODS. — In an action for goods sold, the defendant was allowed to introduce both his books of account and the testimony of his bookkeeper to show that there was no record of receiving the goods. *Held*, that this was error. *Winder* v. *Pollack*, 151 N. Y. Supp. 870 (Sup. Ct., App. Term).

The account-books could not be admitted under the ancient shop-book exception, for the defendant had a clerk. *Ruggles* v. *Gatton*, 50 Ill. 412. See *Smith* v. *Smith*, 163 N. Y. 168, 57 N. E. 300. But this limitation has undoubtedly been frequently relaxed by rather loose statutes. See 2 WIGMORE, EVIDENCE, § 1538. Under the shop-book exception, moreover, the evidence was inadmissible on the ground taken by the court, that it was merely negative. *Scott* v. *Bailey*, 73 Vt. 49, 50 Atl. 557; *Alexander* v. *Smoot*, 13 Ired. (N. C.) 461. But see 2 WIGMORE, EVIDENCE, § 1556. Under the broader exception admitting entries made in the course of duty, this objection should have no force. *Peck* v. *Pierce*, 63 Conn. 310, 28 Atl. 524; *Bastrop State Bank* v. *Levy*, 106 La. 586, 31 So. 164; *Huebener* v. *Childs*, 180 Mass. 483, 62 N. E. 729. *Contra*, *Lawhorn* v. *Carter*, 11 Bush. (Ky.) 7. Of course any record to be thus used as evidence that something did *not* occur must be both regular and exhaustive. *Shaffer* v. *McCrackin*, 90 Ia. 578, 58 N. W. 910; *Riley* v. *Boehm*, 167 Mass. 183, 45 N. E. 84. But these books were clearly inadmissible as entries in the course of duty, since the entrant was available in court. *Bartholomew* v. *Farwell*, 41 Conn. 107; *State Bank of Pike* v. *Brown*, 165 N. Y. 216, 59 N. E. 1. There is, however, still a third possible way of introducing this kind of evidence. Under modern statutes allowing parties to testify in their own behalf, account-books can be used to supplement or refresh a witness' memory, and the shop-book exception becomes unnecessary. *Nichols* v. *Haynes*, 78 Pa. 174; *Anchor Milling Co.* v. *Walsh*, 108 Mo. 277, 18 S. W. 904. *Bushnell* v. *Simpson*, 119 Cal. 658, 51 Pac. 1080. See 2 WIGMORE, EVIDENCE, § 1560. Accordingly, if the books in the principal case were tendered under this last theory, to supplement the clerk's recollection, they should have been admitted, though their proof was merely negative. *State* v. *McCormick*, 57 Kan. 440, 46 Pac. 777; *Guy* v. *Mead*, 22 N. Y. 462. But see *Sanborn* v. *Fireman's Ins. Co.*, 16 Gray (Mass.) 448.

FOREIGN CORPORATIONS — CONDITIONS UPON THE RIGHT TO DO BUSINESS — VALIDITY OF JUDGMENT ON FOREIGN CAUSE OF ACTION BASED ON SERVICE ON STATE OFFICER. — A Louisiana statute provided that suit might be commenced against a foreign corporation which did business in the state by service of process on the secretary of state if the corporation had failed to designate agents on whom process could be served. After such service and with no actual notice, judgment by default was entered against such a corporation in the state court on a cause of action arising outside the state. The corporation now seeks, in the federal court, to enjoin the enforcement of this judgment on the ground of lack of jurisdiction in the state court. *Held*, that the judgment will be enjoined. *Simon* v. *Southern Ry. Co.*, 236 U. S. 115.

See this issue, p. 804, for a discussion of the principles involved in this case.

FRANCHISES — RIGHT TO ENJOIN COMPETITOR ILLEGALLY DOING BUSINESS WITHOUT LICENSE. — The plaintiff telephone company sought to enjoin a competitor from engaging in the telephone business without a license from the Public Utilities Commission, which was required by law. KANSAS LAWS, 1911,